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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,197	11/09/2001	Matthew R. Williams	IPP0034.CON	8029

7590

12/03/2002

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EXAMINER

NGUYEN, SON T

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 12/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

SK

Office Action Summary

Application N .

10/037,197

Applicant(s)

WILLIAMS, MATTHEW R.

Examiner

Son T. Nguyen

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 9-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 9-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on 13 September 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

1. Claims 1,2,9-25 are pending. Claims 3-8 have been cancelled.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1,9-25** are rejected under 35 U.S.C. 102(b) as being anticipated by Christiansen (US 5,815,077).

For claims 1,9,10,12, Christiansen discloses a collar 16 for controlling the behavior of an animal comprising a pressure pulse generator/means 28 carried by the collar, the generator including a probe 34 adapted to mechanically contact and generate a pressure pulse against the skin of the animal (see col. 2, lines 39-42 and col. 3, lines 40-48); a controller 24 coupled with the pressure generator for controlling selective application of the pressure pulse.

For claim 11, Christiansen further discloses in col. 3, lines 42-48, that the pressure pulse means 28,34 is adjustable to vary an intensity of the pressure pulse.

For claim 13, Christiansen teaches various levels of high voltages and pulse sequences (col. 3, lines 42-48). The "high voltage" is capable of being turned on to a point of maximum, which is the amplitude of the voltage.

For claim 14, Christiansen further teaches a receiver 36 operatively associated with the controller.

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For claim 15, Christiansen further teaches the receiver is a radio frequency receiver (col. 2, line 52).

For claim 16, Christiansen further teaches a transmitter 14 operatively associated with the controller.

For claim 17, Christiansen further teaches the transmitter is a handheld remote (col. 2, lines 54).

For claim 19, Christiansen discloses a method of providing animal control comprising the steps of applying a pressure pulse wave generating collar 16 to an animal; monitoring the animal (col. 3, lines 13-57); identifying underdesirable behavior from monitoring the animal (col. 3, lines 13-57; directing a pressure pulse wave (col. 3, lines 43-48) to the skin of the animal when undesirable behavior is detected.

For claim 20, Christiansen further discloses wherein the monitoring step, visually observing the animal (inherent in Christiansen's method to see how the animal will react to the pulse wave so as to stop barking or the like).

For claim 21, Christiansen further discloses in the monitoring step, the step of utilizing a sensor 30.

For claim 22, Christiansen further discloses the sensor monitors barking (col. 3, lines 35-57).

For claim 23, Christiansen further discloses the sensor monitors animal location (col. 3, lines 12-34).

For claim 24, Christiansen further discloses wherein the step of directing a pressure pulse further comprises transmitting a pressure pulse signal from a remote source 14 to the collar (col. 2, lines 49-62).

For claim 25, Christiansen further discloses the step of selecting an intensity of the pressure pulse wave intensity directed to the skin of the animal (col. 3, lines 43-48).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claim 18** is rejected under 35 U.S.C. 103(a) as being unpatentable over Christiansen (as above) in view of Westrick et al. (US 5,559,498). Christiansen is silent about the transmitter comprises a buried wire. Westrick et al. disclose a collar 26 for controlling the behavior of an animal comprising a pressure pulse means 38 carried by the collar; a controller 28 operatively associated with the pulse means; a receiver (col. 4, line 46) operatively operatively associated with the controller; a transmitter 24 operatively associated with the controller, wherein the transmitter comprises a buried wire 18. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a transmitter that is a buried wire as taught by Westrick et al. in the device of Christiansen in order to prevent the animal from damaging the wire by burying the wire beneath the ground.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. **Claims 1-2,9-25** are rejected under the judicially created doctrine of double patenting over claims 1,7-13 of U. S. Patent No. 6,360,697 B1 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: a pressure pulse generator including a probe and a controller to control the pulse. In addition, the method of applying a pressure pulse wave generating collar to an animal, monitoring the animal, identifying the behavior from monitoring the animal and directing a pressure pulse wave to the skin of the animal when undesired behavior is detected.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the

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application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158

USPQ 210 (CCPA 1968). See also MPEP § 804.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



Son T. Nguyen
Patent Examiner, GAU 3643
December 2, 2002